

British Virgin Islands



Why do business in the BVI

The advantages offered by the use of BVI companies and the positive impact of these on deal costs, and the expense and ease of ongoing maintenance and governance

British Virgin Islands (BVI) companies provide cost-effective solutions for investment and cross border transactions. In the vast majority of cases they are used not to avoid tax consequences, but rather because they do not add extra layers of taxation to the taxes investors already pay in their home country, creating a level playing field for investors from all jurisdictions.

Features of the BVI as a place to structure and complete deals:

- BVI company structures facilitate capital flows into developed and emerging economies by offering a platform for raising finance, and acting as efficient portals for collective investments.
- BVI common law legal principles, administrative simplicity and the ability to ring-fence liabilities are acknowledged and enjoy widespread legitimacy.
- BVI securities laws are recognised by regulators worldwide, enabling investors to exit through a private sale or a listing on a major stock exchange.
- BVI companies can list their shares on stock exchanges worldwide, including the LSE, the AIM exchange, the NYSE, NASDAQ, the International Securities Exchange, the TSE, the SGX and the HKSE.
- The BVI does not impose a double layer of regulation (there is no BVI takeover code or BVI public filing requirement applicable to a listed company). BVI statute contains certain provisions supportive of the listing process.
- Ultimately, a BVI business company will be highly flexible in operation, particularly if the company needs to raise equity finance for working capital purposes.

Some key benefits of using BVI companies:

simplicity, cost and standards no additional layer of tax and regulation means incorporation and ongoing costs of using a BVI company are low, even though standards are maintained as required by the International Organisation of Securities Commissions (IOSCO), of which the BVI is a member.



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corporate governance	BVI company law is highly flexible. The BVI imposes very few mandatory corporate requirements, so companies can generally model corporate governance to suit business needs. Generally the board can operate and manage the company without member involvement.
JVs and groups	a director of a joint venture company may act in the best interests of the JV party that appointed him, and a director of a wholly owned subsidiary may act in the best interests of the parent company, even where the action is not necessarily in the best interests of the joint venture company or subsidiary.
no restriction on financial assistance	a BVI company may give assistance to a third party to acquire its shares, and may give security on behalf of a related or unrelated third party.
no share capital	there is no concept of share capital. A company is authorised to issue a specified or even an unlimited number of shares. This allows greater flexibility when a company proposes to declare distributions, carry out reverse share splits, change the par value of its shares and/or effect redemptions.
dividends (distributions)	distributions can be made without member approval by the board subject only to a basic solvency test (the company's assets exceed its liabilities and that the company will continue to be able to pay its debts as they fall due immediately after the distribution).
purchase of own shares	a BVI company may acquire the shares of a member, subject to the same basic solvency test, and with the consent of the member, which may be obtained in advance.
voting majorities	BVI law does not impose prescribed statutory majorities (other than for very limited matters), but rather permits structuring arrangements to suit deal or business needs.
members' remedies	BVI law has codified the traditional English common law basis for members' remedies. BVI company law goes further and provides statutory dissent and appraisal rights for members who object to certain corporate actions, such as a merger, compulsory acquisition, or disposition of major assets. This enables a member to exit the company at fair value without halting or delaying the transaction (in the absence of wrongdoing).
squeeze-out provisions	the holders of more than 90% of the shares may cause the company to redeem the minority shares for fair value. There is a statutory process for the independent appraisal of fair value without application to court.
member protection provisions	tailored articles of association can reflect the desired member's protections (eg disclosure of director interests, authority for issuance of shares, independent valuation for issuance of shares for non-cash consideration and retirement of the directors by rotation).

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continuation / migration

a BVI company may migrate to or from any other jurisdiction that permits corporate redomiciliation.

statutory mergers / consolidation

a BVI company can merge with one or more BVI companies, or foreign companies, and the surviving company may be in a foreign jurisdiction. This ability provides great flexibility for structuring mergers and acquisitions.

schemes and plans of arrangement

a wide variety of transactions may be carried out by way of a court approved scheme or plan of arrangement, which is binding on all members and creditors once duly adopted.

For creditors lending to or taking security from a BVI obligor, the jurisdiction offers the following advantages:

- no corporate rescue statute: no US style Chapter 11 or UK administration provisions in force. The appointment of a liquidator does not prevent enforcement of security by a secured creditor
- statutory rules allow liquidators to challenge transactions at an undervalue, unfair preferences, and voidable floating charges
- limited categories of statutorily preferred creditors on insolvency
- security may be registered publicly in the BVI providing statutory priority
- contractual subordination agreements may vary the statutory priority waterfall
- the enforceability of netting and set off provisions is recognised by statute
- share security is statutory and may be governed by foreign law, permitting, for example, an English law governed charge over shares in a BVI company to include the 'self-help' remedy of appropriation
- the BVI has a modern, purpose-built dedicated commercial court with an experienced judge, excellent availability and a fast and cost effective process.

For more information on any aspect of this briefing please contact any member of the Marbury team.